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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RAFAEL PONCE MEDINA,
12 BOP #22436-298,

13 Plaintiff,

14 vs.

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16 ERICK HOLDER; FRED A. SHEPPARD;
17 IMMIGRATION & CUSTOMS ICE,

18 Defendants.
19

Civil No. 12cv2096 LAB (PCL)

**ORDER DISMISSING CIVIL
ACTION AS FRIVOLOUS
PURSUANT TO 28 U.S.C.
§ 1915A(b)(1) AND DENYING
MOTION TO PROCEED
IN FORMA PAUPERIS
AS MOOT**

(ECF No. 2)

20 Rafael Ponce Medina ("Plaintiff"), currently incarcerated at the Big Springs Correctional
21 Institution located in Big Spring, Texas, and proceeding pro se, initially submitted a civil rights
22 action in the Northern District of Texas. United States District Judge Sam R. Cummings
23 determined transfer to the Southern District of California was appropriate. (ECF No. 5 at 1-2.)
24 In addition, Plaintiff has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28
25 U.S.C. § 1915(a) (ECF No. 2).

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1 **I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

2 As amended by The Prison Litigation Reform Act, 28 U.S.C. § 1915A obligates the Court
 3 to review complaints filed by anyone “incarcerated or detained in any facility who is accused of,
 4 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions
 5 of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after
 6 docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP.
 7 See 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any
 8 portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may
 9 be granted. 28 U.S.C. § 1915A(b); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010).

10 Plaintiff’s Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.
 11 § 1915A(b)(1) because it is duplicative of a motion that he has filed in another action that
 12 remains pending. Plaintiff’s Complaint is identical to a “Motion for Return of Property pursuant
 13 to Rule 41(g)” that remains pending in *USA v. Ponce-Medina*, S.D. Cal. Crim. Case No.
 14 10cr3756 JLS. A court “may take notice of proceedings in other courts, both within and
 15 without the federal judicial system, if those proceedings have a direct relation to matters at
 16 issue.” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic*,
 17 *Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

18 A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it
 19 “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103,
 20 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal
 21 quotations omitted). Thus, because Plaintiff has already filed a motion which is identical to the
 22 Complaint he has filed in this action in *USA v. Ponce-Medina*, S.D. Cal. Crim. Case No.
 23 10cr3756 JLS, the Court hereby DISMISSES S.D. Cal. Civil Case No. 12cv2096 LAB (PCL)
 24 pursuant to 28 U.S.C. § 1915A(b)(1). See *Cato*, 70 F.3d at 1105 n.2; *Rhodes*, 621 F.3d at 1004.

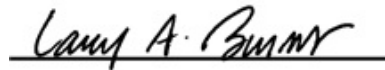
25 **II. Conclusion and Order**

26 Good cause appearing, **IT IS HEREBY ORDERED** that:

27 (1) Plaintiff’s Complaint in Civil Case No. 12cv2096 LAB (PCL) is **DISMISSED** as
 28 frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

1 (2) Plaintiff's Motion to Proceed IFP (ECF No. 2) is **DENIED** as moot.
2 The Clerk shall close the file.
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4 DATED: October 8, 2012

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6 **HONORABLE LARRY ALAN BURNS**
7 United States District Judge
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